

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

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| THE BEVILL COMPANY, INC., |) | |
| Plaintiff, |) | |
| |) | CIVIL ACTION |
| |) | |
| |) | No. 01-2524-CM |
| v. |) | |
| |) | |
| |) | |
| SPRINT/UNITED MANAGEMENT COMPANY, |) | |
| Defendant. |) | |
| |) | |
| |) | |
| _____ |) | |

MEMORANDUM AND ORDER

Plaintiff in this case sued defendant for breach of contract. Plaintiff moved to enjoin defendant from terminating the parties' contract while the lawsuit was pending. Prior to the hearing on plaintiff's preliminary injunction, defendant filed a motion for summary judgment. Plaintiff timely responded, and the summary judgment motion was fully briefed at the time the preliminary injunction hearing was held. At the hearing, the court denied plaintiff's motion for preliminary injunction and granted summary judgment to defendant. Plaintiff appealed to the Tenth Circuit Court of Appeals, who in turn remanded the case to determine whether plaintiff had standing. Having considered the parties' briefs on the issue of standing, the court rules as follows.

I. Background

Plaintiff¹ and defendant entered into a contract, referred to as the Master Services Agreement (the Agreement), wherein plaintiff agreed to provide internet services to various military bases on which defendant was providing telephone services. The Agreement contains a provision entitled “Termination for Convenience.” That provision states, “Sprint may terminate this Agreement or any Contract Order(s) or both at any time without any liability by providing a termination notice to Supplier (plaintiff).”

By letter dated October 23, 2001, defendant provided notice of termination for convenience. At the hearing on the matter, the court considered whether defendant could lawfully terminate the Agreement pursuant to the Termination for Convenience clause. The court held that defendant was legally entitled to terminate the agreement without liability and at any time, subject only to the notice requirement, which defendant had fulfilled.

II. Discussion

Pursuant to the Tenth Circuit’s direction on remand, the court considers whether plaintiff has standing to dispute and enforce the terms of the Agreement. The court notes that plaintiff filed a supplemental memorandum addressing the standing issue. In response, defendant stated that it did not oppose plaintiff’s standing and further requested the court to make a finding of standing based upon plaintiff’s submissions. Because standing is

¹The court will discuss in detail whether the plaintiff in this lawsuit was in fact the party to the Master Services Agreement.

jurisdictional and therefore cannot be waived, the court determines whether plaintiff in fact has standing to bring the instant breach of contract claim.

This action for breach of the Agreement was filed by “The Bevill Company, Inc., . . . incorporated under the laws of the State of New Hampshire.” However, the Agreement was not executed by that Bevill company (hereinafter referred to as “Bevill N.H.”). Rather, the Agreement recited that it was executed “between Sprint/United Management Company . . . and The Bevill Company, Inc., a Delaware Corporation.” Plaintiff contends that the reference in the introductory paragraph of the Agreement to The Bevill Company, Inc., as being a Delaware Corporation is a misnomer and of no consequence. Rather, plaintiff asserts, it is the actual corporate name listed which controls and not some reference to its purported (and incorrect) state of incorporation.

“The Bevill Company” was a corporation formed by Robert Bevill and incorporated under the laws of Delaware on March 24, 1994 (hereinafter referred to as “Bevill Del.”). Bevill Del. became inoperative by law on March 1, 1998. As such, Bevill Del. was no longer in existence at the time the Agreement was signed. Bevill Del. was renewed and revived on March 15, 2002. Importantly, the name under which Bevill Del. was incorporated was and remains “The Bevill Company” and not “The Bevill Company, Inc.”

Robert Bevill signed the Agreement on August 28, 2000, with the intention that he would create a New Hampshire corporation as the party to adopt, ratify, and perform the Agreement. As intended, Bevill N.H. was formed a short time later on October 10, 2000, under the name “The Bevill Company, Inc.” The Agreement related to the providing of internet access on U.S.

Military bases. To that end, the Articles of Incorporation for Bevill N.H. note that its purpose is to “operate as a telecommunications company.” Bevill N.H. performed a variety of acts under the terms of the Agreement, including purchasing equipment and installing equipment on military bases.

Accordingly, the Agreement expressly lists “The Bevill Company, Inc.” as one of the contracting parties. In an action for breach of contract, the corporation named in the contract is the real party in interest. Plaintiff argues that the Agreement mistakenly set forth the state of incorporation of The Bevill Company, Inc. as Delaware.

The construction of a written contract is a matter of law for the court. *Wagon v. Slawson Exploration Co.*, 255 Kan. 500, 511, 874 P.2d 659, 666 (1994). The “cardinal rule of contract interpretation is that the court must ascertain the parties’ intention and give effect to that intention when legal principles so allow.” *Ryco Packaging Corp. v. Chapelle Int’l, Ltd.*, 23 Kan. App. 2d 30, 36, 926 P.2d 669, 674 (1996) (citing *Hollenbeck v. Household Bank*, 250 Kan. 747, 751, 829 P.2d 903, 906 (1992)). Where a contract is complete and unambiguous on its face, the court must determine the parties’ intent from the four corners of the document, without regard to extrinsic or parol evidence. *Simon v. Nat’l Farmers Org., Inc.*, 250 Kan. 676, 679-80, 829 P.2d 884, 887 (1992). Correspondingly, extrinsic evidence of the parties’ intent is admissible when the terms of an agreement are ambiguous.

As such, to the extent that the Agreement’s reference to Delaware as the state of incorporation of “The Bevill Company, Inc.” is ambiguous, the court considers extrinsic evidence. Significantly, defendant does not dispute the evidence proffered by plaintiff.

At the time of the Agreement's execution, Belvill Del.'s incorporation was inoperative and, in effect, the company was nonexistent. Also at that time, Mr. Bevill was acting as the incorporator or promoter of the to-be-formed New Hampshire corporation. True to the intent, a few weeks later Mr. Bevill incorporated Bevill N.H. under the laws of New Hampshire. Bevill N.H. then undertook acts consistent with performance under the Agreement, including leasing equipment and installing circuitry on military bases. The court finds that Bevill N.H. ratified and adopted the contract by undertaking a portion of the performance thereunder.

Based upon the status of Bevill Del. and Bevill N.H. at the time of the Agreement's execution, and based upon the conduct of the parties at that time and immediately thereafter, the court concludes that the parties to the Agreement intended Bevill N.H. to be the contracting party. Accordingly, Bevill N.H. has standing to bring the instant lawsuit for breach of contract. The court's previously issued summary judgment therefore remains the court's final judgment.

IT IS SO ORDERED.

Dated this 2 day of September 2004, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Court Judge

